

September 14, 1993

Mr. Don L. Whitney
P. O. Box 98
Honolulu, Hawaii 96810

Dear Mr. Whitney:

Re: Restrictions on Access to Circuit Court File Room

This in reply to your telefax to the Office of Information Practices ("OIP") dated August 9, 1993.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), an individual's access to the file room of the Circuit Court for the First Circuit, State of Hawaii, may be conditioned upon the individual's presentation of some form of photo identification.

FACTS

The Circuit Court for the First Circuit, State of Hawaii, maintains a file room that is accessible to the public on the first floor of the Kaahumanu Hale building, 777 Punchbowl Street, Honolulu, Hawaii. The file room is open from 8:00 a.m. to noon, and from 1:00 p.m. to 4:15 p.m., Monday through Friday, except on State holidays.

The Circuit Court file room contains duplicate copies of all pleadings and documents that are filed with the Clerk of the First Circuit Court in pending or closed civil, criminal, probate, divorce, and other cases and proceedings.

The duplicate copies of these pleadings and records are contained in thousands of files located on a number of shelves that are accessible only to file room personnel. Each file is indexed by case number and by the names of the parties.

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An individual who wishes to retrieve information or records from the case files must first check-in at the file room's front desk and present some form of photo identification. File room personnel also request the individual to supply the requester's firm name, if applicable, and a telephone number. An individual's photo identification is kept by file room personnel until the individual checks out at the file room's front desk.

Individuals wishing to retrieve particular case files must complete the request form that is attached hereto as Exhibit "A," and supply their name, firm (if applicable), the case number, and plaintiff's name. This information can be retrieved by using public access computer terminals to perform searches for the names of parties and corresponding case numbers.

Once a requester completes the form attached as Exhibit "A," the individual must take a number and wait for file room personnel to call their number, at which time the file room personnel retrieve the file or files that the individual wishes to review. When the individual has completed reviewing the files the individual requested: (1) the files are returned to a cart for refiling, and (2) the individual reports to the front desk to check out, at which time file room personnel return the individual's photo identification.

The above-described policies of the Circuit Court's file room are set forth in a memorandum dated January 18, 1991 a copy of which is attached as Exhibit "B."

DISCUSSION

Under the UIPA each agency must make government records available for inspection and copying upon request of any person, except as provided by section 92F-13, Hawaii Revised Statutes. Haw. Rev. Stat. 92F-11(b) (Supp. 1992). The UIPA defines the term "government record" to mean "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. 92F-3 (Supp. 1992) (emphasis added).

The Legislature defined the term "agency," for purposes of the UIPA, as follows:

"Agency" means any unit of government in this State, any county, or any combination of counties, department, institution, board, commission, district, council, bureau; office; governing authority; other instrumentality of state or county

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government; or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county; but does not include the nonadministrative functions of the courts of this State.

Haw. Rev. Stat. 92F-3 (Supp. 1992) (emphasis added).

We have examined the applicability of the UIPA to records maintained by the State Judiciary in several OIP advisory opinion letters. A recent opinion letter, OIP Opinion Letter No. 93-8 (Aug. 2, 1993), a copy of which is attached as Exhibit "C," contains a summary and discussion of these opinions.

As we noted in OIP Opinion Letter No. 93-8, the UIPA's legislative history suggests that the nonadministrative records of the Judiciary were excluded from the UIPA "to preserve the current practice of granting broad access to the records of court proceedings." S. Conf. Comm. Rep. No. 235, 14th Leg., 1988 Reg. Sess., Haw. S.J. 689, 690 (1988); H. R. Conf. Comm. Rep. No. 112-88, Haw. H.J. 1017, 1018 (1988). Additionally, in OIP Opinion Letter No. 90-4 (Jan. 29, 1990), we stated that:

[N]onadministrative records of the courts, generally speaking, are those records which are provided to the court incident to the adjudication of a legal matter before the tribunal. Such a construction means that records including, but not limited to, charging documents, complaints, motions, pleadings, clerk's minutes, legal memoranda, exhibits, orders, and decisions are not subject to the provisions of the UIPA.

OIP Op. Ltr. No. 90-4 at 5-6 (Jan. 29, 1990) (emphasis in original).¹

For the reasons explained in previous OIP opinion letters, we believe that court files connected with pending or closed Circuit Court cases and proceedings are nonadministrative records of the Judiciary, and that your right to inspect and copy these records is not governed by the provisions of the UIPA.

¹See also Fromer v. Freedom of Information Commission, 1993 WL 293970 (Conn. Super. Ct. 1993) (sustaining finding by Connecticut Freedom of Information Commission that tape recording of a trial was a non-administrative record of the court).

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However, in Honolulu Advertiser, Inc. v. Takao, 59 Haw. 236, 238 (1978), the Hawaii Supreme Court recognized the existence of a common law right to inspect and copy judicial records:

Every court has supervisory power over its own records and files. And while the public does generally have the right, established by the common law, to inspect and copy public records and documents, including judicial records, State v. O'Connell, supra; Craemer v. Superior Court, supra, this right of access is not absolute, and the determination of whether and to what extent access is to be permitted is "is one best left to the sound discretion of the trial court."

Because the UIPA does not apply to the nonadministrative functions of the courts of this State, the OIP does not have the authority to advise you whether, under the UIPA, the court may condition your access to the file room upon the presentation of identification.

However, with respect to agency records that are subject to the provisions of the UIPA, we have previously addressed agency policies requiring UIPA requesters to provide identification. In OIP Opinion Letter No. 90-29 (Oct. 5, 1990), we noted that because the UIPA uses an "any person" access principle, a requester's identity is generally irrelevant to the merits of the person's request. We did, however, acknowledge that under certain narrowly defined circumstances, it would be appropriate for an agency to require UIPA requesters to provide some form of identification.

For example, we concluded that under part II of the UIPA, an agency may properly request identification when an individual requests to inspect an original government record, to prevent damage, loss, or destruction of such original record. Model rules to be adopted by the OIP under section 92F-11(e), Hawaii Revised Statutes, which State and county agencies may adopt, will set forth the circumstances under which an agency subject to the UIPA may require a requester to provide identification to prevent damage, loss, or destruction of government records, or to prevent manifestly excessive interference with the agency's duties and functions.

Similarly, we also noted that an agency may properly require a requester to provide identification when the requester asks to receive a waiver of fees for searching, reviewing, or segregating

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government records, under rules to be adopted by the OIP under section 92F-42(13), Hawaii Revised Statutes. We also opined that when requesters desire an agency to mail them a copy of a government record, the agency must necessarily be provided with the requester's, or someone else's, name and mailing address. Again, rules to be adopted by the OIP after public hearings will set forth the circumstances under which an agency may properly request an individual to provide the agency with identification.

CONCLUSION

The public access provisions of the UIPA do not apply to the "nonadministrative" records of the courts of this State. Haw. Rev. Stat. 92F-3 (Supp. 1992). Based upon principles set forth in previous OIP advisory opinion letters, we conclude that duplicate case files maintained in the Circuit Court's file room are non-administrative records of the court. Therefore, the UIPA does not prohibit the Circuit Court from imposing restrictions upon the access to files maintained in the file room.

Please contact me at 586-1404 if you should have any questions regarding this matter.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

HRJ:sc
c: Honorable Nathaniel H.C. Kim

Ms. Lovina Cruz
Clerk, Legal Documents Section